

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2009

CORAM

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA
and
THE HONOURABLE MR. JUSTICE M. DURAISWAMY

W.P.No.1569 of 2004 &
W.M.P.No.1688 of 2004

The South Indian Sugar Mills
Association - Tamil Nadu
Rep. By its Secretary
"Karumuthu Centre"
2nd floor, 498 Anna Salai,
Chennai - 600 035. ... Petitioner

vs

- 1.The Secreatary (FPD),
Ministry of Consumer Affairs,
Food & Public Distribution,
Government of India,
Krishi Bhavan, New Delhi 110 001.
- 2.The Joint Secretary (Sugar),
Ministry of Consumer Affairs,
Food & Public Distribution,
Government of India,
Krishi Bhavan, New Delhi 110 001.
- 3.The Chief Director,
Directorate of Sugar
Department of Food & Public Distribution,
Government of India,
Krishi Bhavan, New Delhi 110 001.
- 3.The Chairman,
Commission for Agricultural
Costs and Prices,
Government of India,
Krishi Bhavan,
New Delhi 110 001. ... Respondents

Writ petition filed for the issuance of a writ of
Certiorarified Mandamus, calling for the records of the second
respondent relating to the Notification No.GSR No.44(E)/
Ess.Com/Sugarcane dated 14.1.2004 by fixing statutory Minimum Price
of Sugarcane for 2003-2004 at Rs.73/- per quintal linked to the
basic recovery of 8.5% and quash the same as unconstitutional,

ultra vires and provisions of the Essential Commodities Act and Sugarcane (Control) Order, 1966; and direct the respondents to refix the Statutory Minimum price for sugarcane for the sugar year 2003-2004 for the Tamil Nadu Zone taking into consideration the factors listed in Sub Clause (a) to (e) of Clause 3 of the Sugarcane (Control) Order, 1966, the lower sugar prices, higher incidence of taxes on sugarcane and lower cost of cane cultivation prevalent in the state of Tamil Nadu, as contemplated under the explanation to Sub Clause (1) of Clause 3 of the Sugarcane (control) Order 1966.

For Appellant : Mr. Radhakrishnan Sr.Counsel
For Mr.S.Kadarkarai

For Respondents : Mr.Velayutham Pichaiya - for R1
No appearance - for R-2 to R-4

ORDER

M. DURAISWAMY, J

The petitioner association filed the above writ petition praying for a writ of Certiorari and Mandamus, calling for the records of the second respondent relating to the impugned Notification GSR No.44(E)/Ess.Com/Sugarcane, dated 14.1.2004, by fixing statutory Minimum Price of Sugarcane for 2003-2004 at Rs.73/- per quintal linked to the basic recovery of 8.5% and quash the same as unconstitutional, ultra vires the provisions of the Essential Commodities Act and Sugarcane (Control) Order, 1966 and direct the respondents to refix the Statutory Minimum price for sugarcane for the sugar year 2003-2004 for the Tamil Nadu Zone taking into consideration the factors listed in Sub Clause (a) to (e) of Clause 3 of the Sugarcane (Control) Order, 1966, the lower sugar prices, higher incidence of Taxes on sugarcane and lower cost of cane cultivation prevalent in the State of Tamil Nadu, as contemplated under the explanation to Sub Clause (1) of Clause 3 of the Sugarcane (Control) Order, 1966.

2. The brief facts which lead to the filing of the writ petition is as follows:

(i) According to the petitioner's association, the decision to fix Statutory Minimum Price for sugarcane (hereinafter referred to as "SMP") for 2003-2004 at Rs.73/- per quintal is based on suo moto revision recommended in its report by the Commission for Agricultural Cost and Prices (hereinafter referred to as "CACP") without any consultation with Indian Sugar Mills Association (hereinafter referred to as "ISMA") or South Indian Sugar Mills Association (hereinafter referred to as "SISMA") or any association of sugar industry, contravenes the express mandate of the Sugarcane (Control) Order, 1966 stipulating such consultation.

(ii) That the decision to substantially hike SMP for 2003-04 has been taken without having regard to the steep fall in sugar price currently ruling at a six year low figure and the fixation of SMP without having regard to the price at which sugar produced from sugarcane is sold by the producers of sugar is in clear contravention of the express stipulation in Clause 3 of the Sugarcane (Control) Order.

(iii) The supplementary note of CACP dated 29.8.2003, based on which the impugned notification is issued, seeks to subvert the well reasoned main Report of CACP dated 04.10.2002. The principal assumption of CACP on continuance of drought during 2003-04 in arriving at its conclusion for higher SMP is factually incorrect. That the supplementary note in effect is contrary note and seemingly influenced by extraneous factors. The Government without even awaiting the deliberation and recommendation of the group of Ministers, has fixed the SMP at Rs.73/- per quintal, which is purely to be viewed as political on account of the then forthcoming elections to the lok saba.

(iv) Immediately on being aware of the decision of the Central Government to fix the SMP at Rs.73/- per quintal, ISMA made a representation to the Prime Minister and other Union Ministers concerned on 01.01.2004. The ISMA also reiterated its submission to the Central Government by its letter dated 12.01.2004; that the revised SMP fixation has failed to address the regional disparities and hence pleaded for different SMP to be declared for different regions.

(v) The Central Government by its letter dated 1.1.2004, informed the Chief Secretaries of the various State Governments that the Government of India has taken the decision to increase the SMP for 2003-04 season at Rs.73/- per quintal linked to 8.5% recovery. In furtherance of the said letter, the second respondent has issued the impugned notification GSR No.44(E)/Ess.Com/ Sugarcane, dated 14.1.2004, fixing the SMP for the year 2003-04 at Rs.73/- per quintal linked to 8.5% recovery and determining the actual SMP payable by all the sugar factories in the country. The said impugned notification has been issued on the basis of Supplementary Note dated 29.08.2003 submitted by CACP.

(vi) The impugned notification in fixing the SMP for the individual sugar mills, has left the price undecided for as many as 173 sugar mills out of the total of 452 sugar mills with a foot note that information in respect of these sugar factories has not been received by the Central Government as on that date. Therefore, the petitioner's association challenged the impugned notification in the above writ petition.

3. The respondents did not file any counter in the above

writ petition.

4. Heard Mr.Radhakrishnan, learned senior counsel appearing for the petitioner and Mr.Velayutham Pichaiya, learned counsel appearing for the first respondent.

5. The learned senior counsel appearing for the petitioner submitted that the decision of the Central Government to increase the SMP for the year 2003-04 from the initially recommended amount of Rs.65.50 to Rs.73/- per quintal linked to basic recovery of 8.5%, without any consultation with ISMA or SISMA or any of the authorities or bodies of the sugar industry, including the petitioner, as contemplated under Clause 3 of the Sugarcane (Control) Order, 1966, is arbitrary and violative of the express provisions of the Control Order. The suo moto revision, by CACP, without any consultation with anybody representing the interest of the industry is patently bad in law; that the SMP fixation has to strictly follow the safeguards built in Clause 3 of the control order and promote the combined interest of all stack holders; that having formulated its view and recommended the SMP for 2003-04 at Rs.65.50 in its initial report dated 04.10.2002, it has no valid rationale or ostensible reason to revise its recommended price to Rs.73/- per quintal; that since the Central Government has exercised the power arbitrarily for extraneous considerations, the decision taken on that basis is ultra vires; that the detailed and well reasoned report submitted by CACP on 04.10.2002 after consultation with ISMA and other affected bodies cannot stand superseded or subverted by the short supplementary Report of CACP dated 29.8.2003, which has been prepared without any consultation and also without any change in circumstance; that the supplementary note of CACP dated 29.8.2003 makes a radical departure from the initial detailed report of CACP dated 04.10.2002. While the initial report contains detailed narrative and elaborate argument on the need to contain cane price within a reasonable limit, without in any manner discussing or addressing the concerns so raised in its initial report, the CACP in its Supplementary Report recommended for a higher SMP.

6. Countering the submission made by the learned senior counsel appearing for the petitioner, the learned counsel appearing for the first respondent submitted that the impugned notification dated 14.01.2004 fixing the SMP for sugarcane for 2003-04 at Rs.73/- per quintal linked to the basic recovery of 8.5% is just and proper and the same does not contravene the provisions of Clause 3 of the Control Order.

7. Learned senior counsel appearing for the petitioner in support of his submission, relied on the decision reported in 1974 (2) SCC 630 (Saraswathi Industrial Syndicate Limited and others v. Union of India).

In the above decision, the Apex court held that "any attempt to adjust the compensation for losses due to any previous erroneous fixation of sugar price will be unfair to subsequent consumers who may be made to pay

for the past benefits possibly enjoyed by others."

8. On a careful consideration of the materials available on record and the submissions made by both the learned counsel, it could be seen that the SMP for sugarcane payable by sugar factories to cane growers is fixed under clause 3(1) of the Sugar Cane (Control) Order, 1966, which reads as under:

- (a) the cost of production of sugarcane;
- (b) the return to the grower from alternative crops and the general trend of prices of agricultural commodities;
- (c) the availability of sugar to the consumer at a fair price;
- (d) the price at which sugar produced from sugarcane is sold by producers of sugar; and
- (e) the recovery of sugar from sugarcane.

9. It will be evident that CACP has submitted its initial report and made consultation in terms of Clause 3(1) of the Sugarcane (Control) Order, 1966, with the stakeholders like Indian Sugar Mills Association (ISMA) and National Federation of Co-operative Sugar Factories Limited (NFCSEFL), the apex bodies of Sugar Industry, for the sugar session 2003-2004, and by report dated 4.10.2002, recommended SMP at Rs.65.50 per quintal linked to 8.5% recovery, based on certain projections as regards cost of production, cost of transportation, etc. Subsequently, the CACP submitted supplementary report for the sugar session 2003-2004 on 29.8.2003, recommending a revised SMP of Rs.73/- per quintal, while observing that the SMP of Rs.65.50 per quintal originally recommended by the Commission was based on some projected cost figures, which turned out to be much less as compared to the actual costs incurred by farmers, as evident from the rise in input price index.

10. The main grievance of the petitioner is that the supplementary report for SMP for the sugar session 2003-2004 given on 29.8.2003 revising the SMP of Rs.73/- per quintal, was so made without consulting the stakeholders like ISMA and NFCSEFL, the apex bodies of Sugar Industry, as was given earlier. But such submission cannot be accepted for the reasons mentioned hereunder.

11. Under Clause 3(1) of the Sugarcane (Control) Order, 1966, the Central Government, after consultation with such authorities, bodies or associations as it may deem fit, by notification in the Official Gazette, from time to time, fix the minimum price of sugarcane to be paid by producers of sugar or their agents for the sugarcane purchased by them. On behalf of the Central Government, the CACP has consulted the ISMA and others. Having received the opinion of the stakeholders like ISMA and NFCSEFL, it was to submit its report. Though the report was prepared on 4.10.2002 for the sugar session 2003-2004, recommending SMP @ Rs.65.50 per quintal, the Central Government appears to have not

acted on the same and never issued any Notification in the Official Gazette under Clause 3(1) of the Sugarcane (Control) Order, 1966, fixing the minimum price of the sugarcane. In such a situation, before the Central Government acted on the recommendation of the CACP, if it comes to the notice of the CACP that some projected cost figures turned out to be much less as compared to be the actual cost incurred by farmers, it was well within their jurisdiction to submit a revised report by way of supplementary report as made on 29.8.2003 for the same sugar session 2003-2004 and for that, no further consultation was required, the consultation having been already made for the said session earlier. In fact, the report of the CACP is like an internal Office Note, which cannot be relied upon to claim any right, as it is always open for the authority or the Committee to submit a revised report or like a fresh note.

12. In its original report dated 04.10.2002, CACP had recommended the SMP of Rs.65.50 per quintal linked to a basic recovery of 8.5%, with a premium of Rs.0.77 per quintal payable for every 0.1 percentage point increase in recovery beyond this level. By subsequent note dated 29.08.2003, the Commission has considered it necessary to recommend a revised basic SMP of Rs.73/- per quintal alongside an incremental premium of Rs.0.85 per quintal.

13. In the supplementary note, it is also mentioned that the profitability of sugarcane farming in real terms had declined in recent years, due to decline or stagnation in yield, rise in input prices and fall in realised output prices. Therefore, the farmers in general are in a depressed mood in several places, there were also newspaper reports of farmers committing suicide due to loss of crop income and growing indebtedness.

14. Therefore, in the above mentioned circumstances, fixing of SMP for 2003-2004 at Rs.73/- per quintal linked to the basic recovery of 8.5% by the second respondent is perfectly justified. Further consultation with the said bodies is not required. Therefore, both the reports of the CACP are to be considered as a single report in which, active consultation has been made with all the concerned by the CACP.

15. In the above circumstances, there is no arbitrary consideration by the CACP at the time of submitting its supplementary report dated 29.08.2003, which is only a continuation of the report dated 04.10.2002, while finalizing the SMP of sugarcane subsequent to the submission of the original report for 2003-04.

16. The CACP submitted the supplementary report for SMP for 2003-04 sugar season in August 2003 recommending revised SMP of Rs.73/- per quintal, observing that the SMP of Rs.65.50 per quintal originally recommended by the CACP was based on some projected cost figures, which turned out to be much less as compared to the actual costs incurred by farmers, as evident from

the rise in input price index.

17. The facts and circumstances of the judgment reported in 1974(2) SCC 630 (referred supra) differs from the case on hand. Therefore, the above judgment is not applicable to the present case.

18. In these circumstances, we are of the considered view that the impugned notification fixing the statutory Minimum Price of Sugarcane for 2003-2004 at Rs.73/- per quintal linked to the basic recovery of 8.5% is legal and valid and does not warrant any interference. Therefore, the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there will be no order as to costs

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

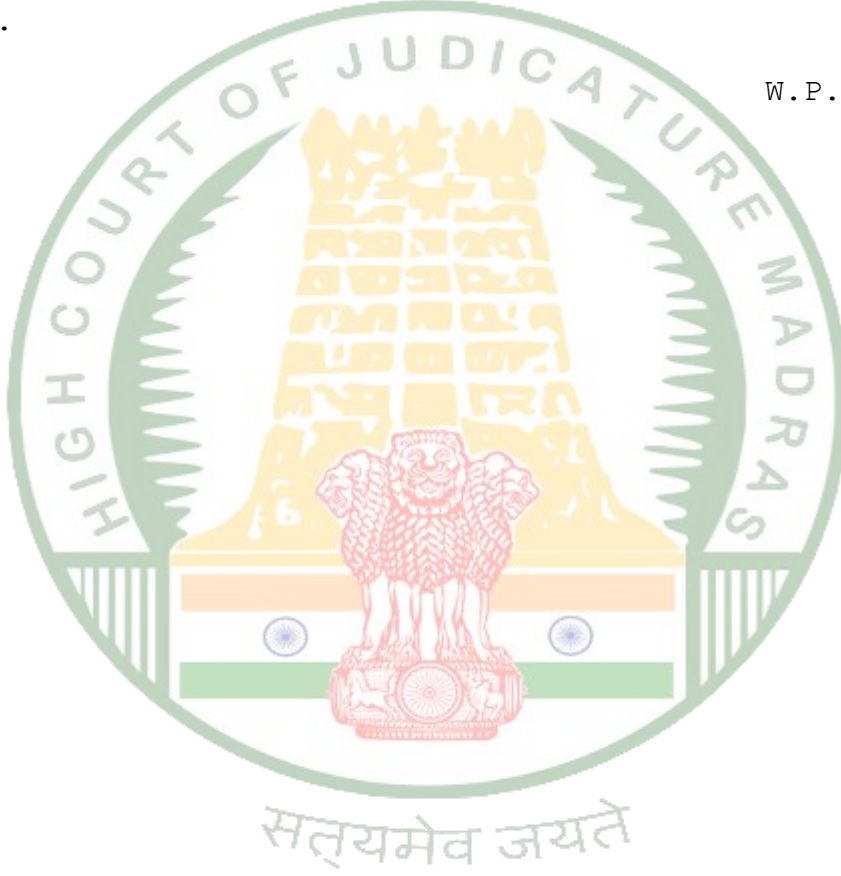
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+1cc to Mr.S.Kadarkarai, Advocate Sr 64760
+1cc to Mr.Velayauthum Pichaiya, Advocate Sr 63831

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W.P.No.1569 of 2004



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